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In The

Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF *AMICUS CURIAE* OF JONATHAN ZELL IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

For many years, Jonathan Zell has been researching the hidden practices of the elite U.S. universities. More recently, this research has expanded into the universities' illegal discrimination against Asian-American applicants.

Mr. Zell is submitting this *amicus curiae* brief on his own behalf to enable this Court to consider an idea that he thinks might go a long way towards solving the problem of illegal racial discrimination in university admissions.

SUMMARY OF THE ARGUMENT

This Court has held that "race or ethnic background may be deemed a 'plus' in a particular applicant's file **** [but] without the factor of race being decisive." *Gratz v. Bollinger*, 539 U.S. 244, 270-271 (2003) (citation and internal quotation marks omitted). Thus, universities may "consider[] racial minority status as a positive," as opposed to a negative, factor in the admissions process. *Fisher v. Univ. of Texas at Austin* ("*Fisher I*"), 133 S.Ct. 2411, 2417 (2013). This may be done to achieve a critical mass of under-represented students — but not racial balancing, which would be illegal. *Id.* at 2419 (citations omitted). However, to ensure that a university's

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than the *amicus curiae* and its counsel made a monetary contribution intended to fund the brief's preparation or submission of this brief. This brief is filed with the consent of the parties, whose letters of consent have been filed with the Clerk.

motive was not "illegitimate racial prejudice or stereotype," *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003) (citation omitted), the admissions process must be "narrowly tailor[ed]" and use a "less restrictive means" to achieve the desired critical mass. *Id.* at 339-340 (citation omitted).

Yet, despite this Court's clear pronouncements, the elite universities — including Respondent University of Texas ("UT") — are violating the above limitations and are hiding these violations in the universities' highly-subjective "holistic" admissions systems.

Here is how the elite universities are doing this: They are not content knowing the racial and ethnic background of only those applicants who voluntarily reveal it. Instead, these universities force all applicants to reveal their race and ethnicity in the application process. The reason is so that the universities can easily identify the applicants' racial and ethnic background for the purpose of using it — *both for and against the applicants* — as a decisive factor in the universities' pursuit of illegal racial balancing.

The evidence to support this are the large disparities by race in the academic credentials of the applicants admitted and also the consistency in the range of percentages by race of the applicants admitted. However, because the holistic admissions system hides both the admissions criteria considered and the weight given to those criteria, proving illegal racial discrimination will always be problematic.

So here is how we can stop or, at least, slow down the universities' illegal actions. Since applicants may *voluntarily* disclose their racial and ethnic background, and universities may then use this

information in appropriate cases as a "plus" factor in the applicants' files, there is no need for universities to force *other applicants* to reveal this information against their will. This is especially so since these other applicants are not likely to include any under-represented minorities.

Thus, admissions systems — such as UT's — that force all applicants to reveal their racial and ethnic background should be found *not* to have met the requirements of being "narrowly tailored" or of having used a "less restrictive means" to achieve the desired critical mass of under-represented minorities. Therefore, UT should *fail* the narrow-tailoring inquiry under this Court's strict-scrutiny analysis.

In the employment realm, employers are generally not allowed to ask applicants for employment questions that would reveal the applicant's race or ethnicity. For example, the U.S. Equal Employment Opportunity Commission's guidelines allow applicants for employment to voluntarily disclose their racial and ethnic information. But, at the same time, it is generally considered to be a *prohibited employment practice* for an employer to require applicants for employment to provide this information.

The logic behind prohibiting employers from requiring job applicants to disclose their race or ethnicity would also apply to undergraduate-college admissions. Applicants who think that their racial or ethnic background will help their chances of being accepted to the college or university may voluntarily disclose it. However, applicants who fear that their racial or ethnic background will be illegally used against them should *not* be forced to reveal it.

ARGUMENT

I. The Elite Colleges' "Holistic" Admissions System Was Designed to Perpetrate Racial and Ethnic Discrimination

As numerous academic studies have documented, led by Harvard[2] the elite colleges previously enforced strict quotas limiting the number of Jewish students. To accomplish this goal, the colleges devised an admissions system that allowed them to admit or reject whomever they wanted and *for any reason*, and also cloaked the entire process in secrecy so as to hide its discriminatory intent.

First, the colleges had to gather the information that would permit them to identify which applicants were Jewish. Once the Jews were identified, the colleges then used various pretexts to reject their applications. Moreover, the pretexts that the colleges used as a cover for discrimination against Jews still *continue* to this very day to be used against other disfavored racial and ethnic groups.

For example, according to University of California at Berkeley Professor Jerome Karabel's monumental study:

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[2] Both the *Bakke* and *Grutter* Courts held up Harvard College's "holistic" admissions system — even though Harvard was not a party to either case — as an example of what a nondiscriminatory admissions system *supposedly* looked like. *See Regents of Univ. of Calif. v. Bakke*, 438 U.S. 265, 316-324 (1978); *Grutter v. Bollinger*, 539 U.S. at 335-337. Accordingly, this *amicus* brief will endeavor to show that not *even* Harvard's vaunted admissions system — let alone that of the other elite colleges and universities (such as Respondent University of Texas) — is free from illegal discrimination.

Harvard, Yale, and Princeton *** admitted students almost entirely on the basis of academic criteria for most of their long histories. But this changed in the 1920s, when traditional academic requirements no longer served to screen out students deemed "socially undesirable." By then, it had become clear that a system of selection focused solely on scholastic performance would lead to the admission of increasing numbers of Jewish students, most of them of eastern European background. This transformation *** was unacceptable to the Anglo-Saxon gentlemen who presided over the Big Three (as Harvard, Yale, and Princeton were called by then). Their response was to invent an entirely new system of admissions **** It is this system that persists — albeit with important modifications — even today.

The defining feature of the new system was its categorical rejection of the idea that admission should be based on academic criteria alone. ***

[T]he top administrators of the Big Three (and of other leading private colleges, such as Columbia and Dartmouth) recognized that relying solely on any single factor — especially one that could be measured, like academic excellence — would deny them control over the composition of the freshmen class.

****

Chastened by their recent experience with the traditional system of admission examinations,

> which had begun yielding the "wrong" students, the leaders of the Big Three devised a new admissions regime that allowed them to accept — and to reject — whomever they desired. The cornerstones of the new system were discretion and opacity — discretion so that gatekeepers would be free to do what they wished and opacity so that how they used their discretion would not be subject to public scrutiny.
>
> ****
>
> The centerpiece of the new policy would be "character" — a quality thought to be in short supply among Jews but present in abundance among high-status Protestants. *** Inherently intangible, "character" could only be judged by those who had it. Coupled with the new emphasis on such highly-subjective qualities as "manliness," "personality," and "leadership," the gatekeepers of the Big Three had broad discretion to admit — and to exclude — applicants on the basis of highly personal judgments.
>
> *** For the gatekeepers of the Big Three, the trick was to devise an admissions process that would be *perceived* — not least by themselves — as just.

JEROME KARABEL, THE CHOSEN: THE HIDDEN HISTORY OF ADMISSION AND EXCLUSION AT HARVARD, YALE, AND PRINCETON at 1-3 (2005) (hereinafter, "KARABEL") (emphasis added). *See also* MARCIA SYNNOTT, THE HALF OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD,

YALE, AND PRINCETON, 1900-1970, at 20, 112 (1979); DAN OREN, JOINING THE CLUB: A HISTORY OF JEWS AND YALE (1985).

Of course, the admissions process at the Big Three was anything but "just." Indeed, if there were any justice in this world, their admissions process would be recognized for what it was — cheating — and treated accordingly.

To limit the number of Jews admitted, the Big Three decided that they would have to add "certain non-intellectual" admissions criteria to the existing academic criteria, thereby creating a precursor of today's holistic admissions system. However, as Robert Nelson Corwin (Chairman of Yale's Board of Admissions from 1920 to 1933) made clear in his "Memo on Jewish Representation," the sole purpose of these additional requirements was to create a pretext on which to reject the Jewish applicants:

> No college or school seems to have discovered or devised any general criteria which will operate to exclude the undesirable and uneducable members of this [Jewish] race. All which have been successful in their purpose have had to avail themselves of some agency or means of discrimination based on certain non-intellectual requirements.

KARABEL, *supra*, at 114 (citation omitted). Thus, as Professor Karabel noted: "If the 'Jewish invasion' was to be halted, it was clear *** that only a frank double standard was likely to work." *Ibid.*

Ostensibly, the additional admissions criteria applied to all applicants. However, under the "double standard" adopted by the Big Three, these criteria were in fact applied only to the Jews and only for the purpose of rejecting them. This was because, as the schools realized, "[c]riteria intended to reduce the number of Jews, *if neutrally applied*, might not have the anticipated effects." KARABEL, *supra*, at 114 (original emphasis).

Thus, as Harvard's president A. Lawrence Lowell noted in 1926, any test of character implemented "with the intent of limiting Jews should not be supposed *** as a measurement of character really applicable to Jews and Gentiles alike." KARABEL, *supra*, at 89 (citation omitted). According to Professor Karabel: "In frankly endorsing a double standard, Lowell was rejecting the argument that applying ostensibly neutral criteria such as 'character' would be sufficient to reduce the number of Jews. *** [H]is goal was restriction itself." *Ibid.*

Perhaps the most egregious double standard involving Jewish and Gentile applicants concerned geographical diversity. As many commentators have noted, Harvard (like the other elite colleges) specifically "initiated its diversity discretion program to decrease the number of Jewish students." Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1, 36 (1996). *See* RICHARD C. KAHLENBERG, THE REMEDY: CLASS, RACE, AND AFFIRMATIVE ACTION at 235, n. 75 (1997)(Originally, geographical preferences "were meant not to broaden diversity but to limit it.").

To put its diversity policy into effect, in 1923 Harvard approved the use of a top one-seventh plan in which Harvard would admit students whose scholastic rank placed them in the highest seventh of their graduating high-school classes. This was a "thinly disguised attempt to lower the Jewish proportion of the student body by bringing in boys *** from regions of the country [primarily, the West and the South] where there were few Jews." KARABEL, *supra*, at 101.

However, just in case too many Jews slipped in somehow, President Lowell advised Henry Pennypacker, the Chairman of Harvard's Committee on Admissions, "that it [the Committee] was 'under no obligation' to apply the top-seventh plan 'to any school if it does not think it best to do so.'" KARABEL, *supra*, at 102 (citation omitted). This was designed to authorize Pennypacker, when necessary, to act to "reduc[e] the number of Jewish students as long as he did so discretely." *Id.* at 103.

Although "[d]esigned to bring to Cambridge more small-town students, most of whom were expected to be Protestant, the [top-seventh] plan had the totally unintended effect of providing another avenue of entry for Jewish students." KARABEL, *supra*, at 171 (citation omitted). Therefore, in 1936, Harvard's admissions committee established as its "policy: 'If we seem to be getting a preponderance of an undesirable type [i.e., Jews] from any particular locality, we cut out the whole locality.' *** As part of this policy, Harvard specifically excluded from its 'top-seventh' plan applicants from high schools in Long Island, eastern New York, and New Jersey." *Id.* at 171-172.

Moreover, at the same time that Harvard's top one-seventh plan was being relaxed whenever it would result in too many Jews being admitted, it was also relaxed in the other direction whenever it would result in too few upper-class WASPs being admitted. According to Professor Karabel:

> [In Harvard's view, the most] desirable was an applicant of bona fide upper-class origin — in [Dean] Bender's words, "the St. Grottlesex type, or at any rate the sons of the economic and social upper crust" **** [Thus,] Harvard's response was virtually to guarantee admission to those [upper-class applicants] who met minimal standards.

KARABEL, *supra*, at 188 (citation omitted).

During Harvard President James Bryant Conant's administration (1933-1953), Harvard relaxed the rigid Jewish quota of 15 percent adopted under Lowell, but continued to restrict Jewish enrollment under a policy of *racial balancing*. As a result:

> Harvard's long-standing policy of holding Jews to different and higher standards than other applicants very much remained in place under Conant. So, too, did the criteria emphasizing character and other "intangibles" that had been devised in the 1920s to limit Jewish enrollment. *** [T]hat postwar Harvard did not move to eliminate discrimination against Jews **** [was] to keep in place measures to ensure continued [racial] "balance" in the college.

KARABEL, *supra*, at 193 (citation omitted).

College admission practices during Yale President Charles Seymour's term of office (1937-1951) were similar to that of his contemporary at Harvard. Even after Yale curtailed its formal quotas, "Yale's discrimination against Jewish applicants intensified" under Seymour. KARABEL, *supra*, at 208. As Seymour himself explained it, the rejection of a "number of Jewish boys who in normal circumstances might well have received favorable consideration" was necessary "to keep the various elements in the incoming classes in some rough approximation to the proportions which obtain throughout the national population." *Id.* at 209 (citation omitted). Thus, this was "Yale's policy of [racial] balance." *Ibid.*

But racial balancing is clearly discrimination. Moreover, ever since this Court's 1978 decision in *Bakke*, racial balancing has been specifically ruled to be *illegal*. For example, as this Court recently held in *Fisher v. Univ. of Texas at Austin*, 133 S.Ct. at 2419:

> A university is not permitted to define diversity as "some specified percentage of a particular group merely because of its race or ethnic origin." *Bakke, supra*, at 307 (opinion of Powell, J.). "That would amount to outright racial balancing, which is patently unconstitutional." *Grutter, supra*, at 330. "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'" *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 732 (2007).

Nonetheless, as will be demonstrated below, the elite colleges are continuing to this day to engage in

illegal racial balancing. Moreover, all of the *cheating* that the Big Three formerly employed to keep out Jews — the pretexts, double standards, use of different admissions criteria, and unequal application of the same criteria — is being hidden under the rubric of a renamed "*holistic*" system of admissions so that it can now be used against a new target: Asian-Americans.

A. The "Holistic" Admissions System is Still Being Used Today to Perpetuate Racial and Ethnic Discrimination

As Professor Karabel previously explained, *see supra* p. 6, the cornerstones of the elite-colleges' admissions system "were discretion and opacity — discretion so that gatekeepers would be free to do what they wished and opacity so that how they used their discretion would not be subject to public scrutiny."

This is especially true of the colleges' present system of holistic admissions:

> From colleges' perspective, "holistic" is just shorthand for, we make the decisions we make, and would rather not be asked to spell out each one. It's a way for schools to discreetly take various sensitive factors — "over-represented" minorities [i.e., Asian-Americans], or students whose families might donate a gym — into account.

Phoebe Maltz Bovy, Ph.D., *The False Promise of "Holistic" College Admissions*, The Atlantic (Dec. 17, 2013) (available at http://www.theatlantic.com/

education/archive/2013/12/the-false-promise-of-holistic-college-admissions/282432/).

Sara Harberson (the former associate dean of admissions at the University of Pennsylvania) concedes that the holistic admissions process not merely hides a college's decision-making process, but also hides its illegal racial balancing:

> In all, holistic admissions adds subjectivity to admissions decisions, and the practice makes it difficult to explain who gets in, who doesn't, and why. But has holistic admissions become a guise for allowing cultural and even racial biases to dictate the admissions process?
>
> To some degree, yes.
>
> *** [R]acial stereotyping, money, connections and athletics sometimes overshadow [every thing else] **** The veil of holistic admissions allows for these other factors to become key elements in a student's admissions decision.
>
> ****
>
> Nowadays nobody on an admissions committee would dare use the term racial "quotas," but racial stereotyping is alive and well. And although colleges would never admit students based on "quotas," they fearlessly will "sculpt" the class with race and gender percentages in mind.
>
> ****

> In the end, holistic admissions can allow for a gray zone of bias at elite institutions, working against a group such as Asian Americans that excels in the black-and-white world of academic achievement.
>
> ****
>
> Without more transparency, holistic admissions can become an excuse for cultural bias to dictate a process that is supposed to be open doors.

Sara Harberson, *The Truth about "Holistic" College Admissions*, Los Angeles Times (*Op-Ed*, June 9, 2015) (hereinafter,"Harberson") (available at http://www.latimes.com/opinion/op-ed/la-oe-harberson-asian-american-admission-rates-20150609-story.html).

Let us now look more closely at how universities use the holistic admissions system to hide their illegal policies and, in particular, their use of race as a way to restrict the number of Asian-Americans for the purpose of racial balancing.

When the admissions statistics at Harvard were first leaked in the 1980s, they showed that "the acceptance rate for Asian-Americans at Harvard was lower than that for white applicants, and their proportion of the freshman class had hovered in a suspiciously narrow range (between 10 and 12 percent)." *See* KARABEL, *supra*, at 501.

Furthermore, more recent data from a variety of elite colleges show that, to receive equal consideration in admissions, on the SAT Asian-Americans had to outperform whites by 140 points, Hispanics by 270

points, and Blacks by 450 points out of a possible 1600 points.[3] *See* THOMAS J. ESPENSHADE AND ALEXANDRA RADFORD, NO LONGER SEPARATE, NOT YET EQUAL: RACE AND CLASS IN ELITE COLLEGE ADMISSION AND CAMPUS LIFE 92 Table 3.5 (2009).

Thus, as Professor Karabel noted: "At least with respect to academic qualifications, the evidence seemed clear: just like Jews before them, Asian Americans had to meet a different and higher standard than other applicants." KARABEL, *supra*, at 502 (citations omitted).

To justify the disparate treatment between Asian-American and white applicants, Harvard's Admissions Office claimed in 1988 that, "while Asian Americans are slightly stronger than whites on academic criteria, they are slightly less strong on extracurricular criteria." KARABEL, *supra*, at 503 (citation omitted).

However, besides understating the superiority of the Asian-Americans' academic credentials, Harvard was also misrepresenting their non-academic achievements. For example, Brown University's

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3 Data from UT show similar results. For example, in UT's entering class of 2009, among the students admitted outside the Top Ten Percent plan, "Blacks had a mean GPA of 2.57 and a mean SAT score of 1524; Hispanics had a mean GPA of 2.83 and a mean SAT score of 1794; whites had a mean GPA of 3.04 and a mean SAT score of 1914; and Asians had a mean GPA of 3.07 and a mean SAT score of 1991." *See Fisher v. Univ. of Texas at Austin*, 133 S.Ct. at 2431 (Thomas, J., concurring).

much more honest 1984 assessment of its own admissions system found that:

> Asian-American applicants [had] receive[d] **** unjustified low [non-academic] ratings *** due to the cultural bias and stereotypes which prevail[ed] in the Admissions Office. [This] *** prevent[ed] admission officers from *** accurately evaluating the *** Asian-American[s]."

Brown Univ. Corporation Committee on Minority Affairs, "Report to the Corporation Committee on Minority Affairs From Its Subcommittee on Asian American Admissions" (Feb. 10, 1984) at 4 (quoted in KARABEL, *supra*, at 501).

Since then, many knowledgeable authorities from academia and the media have confirmed the elite colleges' practice of discriminating against Asian-Americans for the purpose of racial balancing:

- Harvard Law Professor Alan Dershowitz stated: "Asian Americans clearly get a big whack — not a tip — in the direction against them. Harvard wants a student body that possesses a certain racial balance." *See* P. Pan, *Ed. Department Clears Harvard: Government Accepts Harvard's "Legacy-Athlete" Explanation*, The Harvard Crimson (Oct. 6, 1990) (hereinafter, "Pan")(available at http://www.thecrimson.com/article.aspx?ref=345511).

- Similarly, Pulitzer-Prize-winning journalist Daniel Golden was quoted as saying: "If you look at the Ivy League, you will find that Asian-Americans never get to 20 percent of the

> class. The schools semi-consciously say to themselves, 'We can't have all Asians.'" *See* Ethan Broner, *Asian-Americans in the Argument*, The New York Times (Nov. 1, 2012) (hereinafter, "Broner").

- "Commenting on *** [discriminatory college admissions policies] involving Asian applicants, Rod Bugarin, a former admissions officer at Wesleyan, Brown and Columbia, said: 'The bar is different for every [racial] group. Anyone who works in the industry knows that.'" Bronner, *supra*.

- As previously noted, Sara Harberson (the former associate dean of admissions at the University of Pennsylvania) stated that "colleges *** fearlessly will 'sculpt' the [incoming] class with race *** percentages in mind." *See* Harberson, *supra*.

Accordingly, numerous researchers are now calling Asian-Americans "the new Jews" in college admissions because Asian-Americans are being subjected to the same kind of discrimination and racial balancing as Jews used to be.

For example, as Daniel Golden explained:

> Asian Americans are the new Jews, inheriting the mantle of the most disenfranchised group in college admissions. The nonacademic admissions criteria established to exclude Jews, from alumni child status to leadership qualities, are now used to deny Asians. "Historically, at the Ivies, the situation of the Asian minorities parallels very closely the

> situation of the Jewish minorities a half century earlier," said former Princeton provost Jeremiah Ostriker.
>
> ****
>
> [J]ust as they [universities] constrained Jewish enrollment ***, they now set a higher bar for Asian American applicants, freezing out students who would be considered scholastic superstars if they hailed from a different heritage.
>
> ****
>
> Like Jews during the quota era, Asian Americans are overrepresented at selective colleges compared with their U.S. population *** but are short-changed relative to their academic performance. ***
>
> Now as then, a lack of preferences can be a convenient guise for racism.

DANIEL GOLDEN, THE PRICE OF ADMISSION: HOW AMERICA'S RULING CLASS BUYS ITS WAY INTO ELITE COLLEGES — AND WHO GETS LEFT OUTSIDE THE GATES at 199-201 (2006). *See also* Charles Murray, *At the Ivies, Asians are the new Jews*, AEIdeas (Dec. 11, 2012) (available at http://www.aei.org/publication/at-the-ivies-asians-are-the-new-jews/); Ron Unz, *The Myth of American Meritocracy: How corrupt are Ivy League admissions?* The American Conservative (Nov. 28, 2012)(available at http://www.theamericanconservative.com/articles/the-myth-of-american-meritocracy/).

B. This Court's Ban on Illegal Racial Discrimination in University Admissions Has Been Ineffective

This Court's modern jurisprudence on the use of race in university admissions consists of *Regents of Univ. of Calif. v. Bakke*, *supra*; *Gratz v. Bollinger*, *supra*; *Grutter v. Bollinger*, *supra*; and *Fisher v. Univ. of Texas at Austin* ("*Fisher I*"), *supra*. The reason this subject keeps returning is that this Court's ban on the subset of race-conscious admissions policies that is illegal has been ineffective.

This Court's prior decisions had three main holdings. The first holding was that, to achieve diversity, *see, e.g., Grutter v. Bollinger*, 539 U.S. at 328, race could be used as a "plus" — as opposed to a minus — factor in university admissions. *Id.* at 334.

Second, to prevent "illegitimate racial prejudice or stereotype," *see Grutter*, 539 U.S. at 333 (citation omitted), the manner chosen to achieve diversity must be "narrowly tailor[ed]" and use a "less restrictive means." *Id.* at 339-340 (citation omitted). For example, applicants must be evaluated in comparison with the entire applicant pool. *Id.* at 334-335.

The third holding was the problematic one. The Court held that race had to be considered as part of an individualized "holistic" process that considered all of the applicant's qualities. *See, e.g., Grutter v. Bollinger*, 539 U.S. at 337.

However, like a sausage-making factory, the holistic process shrouds admissions decisions in a veil of secrecy. Indeed, it was originally created specifically to *hide* discrimination against Jews and

to allow the colleges to admit or reject anyone they wanted and *for any reason*. Even today, it is used to hide not only illegal racial balancing but also out-and-out corruption. Thus, with a holistic system, no one other than the universities can know whether race was used as a plus or minus factor — or the weight that was given to race. This, of course, gives the universities a license to cheat (which, as history has demonstrated, they have a *propensity* to do).

Reasonable people can disagree about whether the first of these holdings — that is, permitting race to be used as a plus factor in admissions — was proper. But everyone should be able to agree that the third holding was very *improper*. For what the third holding essentially told the universities was this: If you use race as a factor in admissions, then do so in such a way that no one else will know whether you have done it legally or illegally. So the Court's prior decisions were flawed to the extent that they were telling universities to hide their use of race even — or especially — if it exceeded the bounds of the law.

Nonetheless, in creating the third holding, this Court had good motives. It wanted to permit affirmative action for the descendants of slavery, but without being so obvious about it as to provoke the ire of the public. However, what the Court overlooked is that, when you give someone a license to cheat, you cannot predict how that person will use it. And, in this situation, the universities are using this license to *help* African-Americans, but also to *hurt* Asian-Americans.

Thus, universities are using race — both for and against applicants — as a decisive factor in admis-

sions decisions without caring that they are breaking the law. Instead, the universities are only concerned with hiding what they do inside an opaque holistic process so that they will not get caught. As a result, this Court's ban on illegal racial discrimination has been *ineffective* for Asian-Americans. Moreover, court decisions that are not followed up by enforcement suggest that the perception of legitimacy is more important than legitimacy itself.

Rather than accept our word for this, take a look at what two neutral observers — spanning the years 1988 to the present day — have said on this topic.

To begin with, the head of the U.S. Justice Department's Civil Rights Division, Assistant Attorney General William Bradford Reynolds, stated in 1988:

> [M]any of the country's elite universities may well be practicing discrimination against Asian-American student applicants — that is, evaluating their applications differently from the applications of non-Asian students of comparable qualifications.
>
> ****
>
> In practice, th[e] "diversity" explanation operates more often than not as a "cover" for the allocation of freshman positions based on race — precisely the evil condemned in Bakke. Admissions results are less and less the product of *** decisionmaking *** on a case-by-case basis **** [G]roup statistics in many universities drive the admissions decisions, at the expense of individual achievement. While specific numbers of places are no longer

> overtly set aside, percentages are regularly assigned as a method of reserving slots for different minority and nonminority groups. The losers under such a regime are those high school graduates deserving admission but passed over for less qualified applicants who are taken in order to satisfy percentage benchmarks.

William Bradford Reynolds, *Discrimination against Asian-Americans in Higher Education: Evidence, Causes, and Cures*, Remarks presented at the Symposium on Asian American University Admissions at 9, 13, 14 (Washington, DC, Nov. 30, 1988) (hereinafter, "Reynolds"). Retrieved from ERIC database. (ED308730) (Available at http://files.eric.ed.gov/fulltext/ED308730.pdf).

However, perhaps the most well-known and recent case where "[h]olistic admissions *** provided a cover for illegal discrimination" was and is at UCLA. *See* Richard Sander, *The Consideration of Race in UCLA Undergraduate Admissions*, (Oct. 20, 2012)(available at http://www.seaphe.org/pdf/uclaadmissions.pdf).

> UCLA *** used large racial preferences until the Proposition 209 ban took effect in 1998.
>
> *** [T]here was indeed a post-209 drop in minority enrollment as preferences were phased out. *** [I]n 2006, there was a particularly low yield ***, so much so that the university reinstituted covert, illegal racial preferences.

Richard Sander and Stuart Taylor, Jr., *The Painful Truth About Affirmative Action*, The Atlantic (Oct. 2, 2012) (available at http://www.theatlantic.com/national/archive/2012/10/the-painful-truth-about-affirmative-action/263122/).

Professor Tim Groseclose (who served on the faculty committee responsible for oversight of undergraduate admissions at UCLA from 2005-2008) explained how UCLA carries out a policy of illegal racial balancing through its holistic admissions system:

> UCLA is cheating on admissions. *** [A]dmissions staff members *** learn the race of applicants; then, in violation of Proposition 209, readers [of applications] use such information to evaluate applicants. *** [S]uch practices are de facto implementation of racial preferences.
>
> ****
>
> [A] more accurate term for the act that I described is "malfeasance," since the act is a violation of California law, which disallows universities to use race as a factor in admissions.
>
> ****
>
> [T]he chancellor of the university, Norm Abrams, [told my committee:] "Several constituencies of UCLA are distressed and upset about the very low numbers of African American freshman. The political angst and concern is enormous. *** The numbers of under-

> represented minorities on campus are too small. *** I ask that you make the whole admissions process holistic."
>
> ****
>
> It was obvious that the admissions staff was under intense pressure to admit more African Americans. It was also obvious that the main purpose of [the] holistic system was to facilitate that goal, by allowing all readers to learn the race of applicants who report race on personal essays.
>
> ****
>
> As Chancellor Abrams and many others admitted, the main reason for the switch to a holistic system was to increase the number of African American students. Judged by this standard, the switch was successful.

Tim Groseclose, *Report on Suspected Malfeasance in UCLA Admissions and the Accompanying Cover-Up* (Aug. 28, 2008) at 2-5 (available at http://www.sscnet.ucla.edu/polisci/faculty/groseclose/CUARS.Resignation.Report.pdf). *See* TIM GROSECLOSE, CHEATING: AN INSIDER'S REPORT ON THE USE OF RACE IN ADMISSIONS AT UCLA (2014).

Finally, thanks to numerous current and former admissions directors, we now know *exactly* how the elite colleges are perverting the holistic admissions system.

In *Grutter v. Bollinger*, 539 U.S. at 334, this Court reaffirmed the principle that "universities cannot establish quotas for members of certain racial groups

or put members of those groups on separate admissions tracks" (citing *Bakke*, 438 U.S. at 315-316 (opinion of Powell, J.)). However, in direct violation of this Court's past rulings, the elite colleges nonetheless place Asian-Americans and other minority applicants on separate tracks where they only compete against themselves, essentially creating quotas.

As Steve Cohen, an attorney and author of a book on college admissions, recently explained:

> [T]here is a quota system at work.
>
> ****
>
> [A]t elite colleges *** smarts — *** represented by high SAT scores and grades *** — come into play *only after* an applicant's "tag" — his or her target group is assigned. That's because top schools are *** looking *** [for] [k]ids who fill key niches on campus. ***
>
> [T]he largest niche to be filled is academic.
>
> Other important niches include athletics, performing arts, legacies, and yes, diversity. *** [G]etting racial minorities onto campus would be a priority.
>
> ****
>
> The very wealthy and famous are also a sought-after target niche. ***
>
> Within each of these niches the admissions office will look for * * * those [kids] likely to survive the school's academic rigors.
>
> ****

> Without another tag, it is within the academic niche that smart kids compete — basically against each other. *** [It is wrong to] assume[] the Asian American kids are competing against Blacks, Hispanics and Caucasians. *** [T]hey're not; they're competing against all just-smart kids; mainly each other.

Steve Cohen, *The Secret Quotas in College Admissions,* Forbes.com (July 6, 2015) (available at http://www.forbes.com/sites/stevecohen/2015/07/06/the-secret-quotas-in-college-admissions/)(emphasis added).

Mr. Cohen's information has been confirmed by many admissions counselors. For example, according to former Cornell admissions officer Nelson Urena: "[D]emographic data is used to aggregate students into pools with similarities along certain demographic statistics. The honest fact is that *** Asian American students *** fall *** in *** [their own] pool." *See* Abby Jackson, *Ex-Ivy League admissions officer reveals why it's sometimes tougher for Asian kids to get in*, Business Insider (Aug. 12, 2015) (available at http://www.businessinsider.com/ivy-league-admissions-officer-explains-why-its-sometimes-tougher-for-asian-kids-to-get-in-2015-8).

Indeed, a survey of 63 of the most-competitive colleges conducted by Rachel B. Rubin, a doctoral student in education at Harvard, concluded:

> When an applicant has an exceptional talent (e.g. music, athletics) or is part of a severely underrepresented group at the institution, the applicant **** may compete only among those with the same talent or within the same group. **** As a result, disparities may arise between

> the levels of academic merit of certain subgroups of students. *** That *** contradict[s] *** the Supreme Court's directives on how minority status may be considered.

See Scott Jaschik, *How They Really Get In*, Inside HigherEd.com (April 9, 2012)(available at https://www.insidehighered.com/news/2012/04/09/new-research-how-elite-colleges-make-admissions-decisions). Of course, the disparities that we previously saw among the various racial groups with regard to grades and SAT scores, *see supra* pp. 14-15 and 15, n. 3, are consistent with the use of separate admissions tracks.

What is particularly disconcerting about this information is that it shows that the elite colleges have never really changed their policies to conform to this Court's rulings. For example, in 1992

> [t]he [U.S.] Education Department found that [Boalt Hall,] the law school [at the University of California at Berkeley,] employed a practice of placing minority candidates into separate tracks, so that minority candidates competed only with members of their own groups **** The Education Department's investigation was instituted, according to press reports, after an Asian applicant received a letter essentially saying she was on the "Asian waiting list." Boalt Hall agreed, without an admission of guilt, to change its policy of "isolating minority applicants from the general pool."

Richard D. Kahlenberg, *Class-Based Affirmative Action*, 84 CALIF. L. REV. at 1051, n. 84 (1996) (hereinafter, "Kahlenberg")(citations omitted).

Even more disturbing was the reaction to the Education Department's findings by the dean of the Berkeley law school. Stating that "[w]e are proud of this policy," the dean added that "[w]e think we can correct these concerns about our program with very minor procedural changes and continue the thrust of our program." Kahlenberg at 1051, n. 84 (citations omitted). This shows the ease with which the universities think that they can *hide* their illegal policies, thereby making this Court's rulings "meaningless" in the eyes of some legal scholars. *Id.* at 1051.

Accordingly, the universities use the holistic admissions process to hide (1) their use of racial-minority status as a *negative* or *unfavorable* factor for Asian-Americans; (2) their use of separate admissions tracks (a kind of quota) for different racial minorities; and (3) their use of race — both for and against applicants — as a decisive factor for the purpose of racial balancing. In all three instances, this constitutes illegal racial discrimination.

For, as this Court has consistently held, a university may only "consider[] racial minority status as a positive or favorable factor in a university's admissions process." *Fisher I*, 133 S.Ct. at 2417. Then, "a university may consider race or ethnicity only as a 'plus' in a particular applicant's file, without insulat-[ing] the individual from comparison with all other candidates." *Grutter v. Bollinger*, 539 U.S. at 334 (citation and internal quotation marks omitted). Finally, a university may do so only to achieve diversity, not racial balancing. *Fisher I*, 133 S.Ct. at 2419.

Nonetheless, there is cause for hope because some members of this Court are aware that the elite

colleges will ignore the Court's rulings when they interfere with what the colleges want to do. (So, if the Court will not enforce its rulings, then at least maybe the Court will allow applicants to college to use the self-help methods that will be proposed later on in this brief.)

As Justice Ginsburg stated in *Gratz*:

> One can reasonably anticipate *** that colleges and universities will seek to maintain their *** [race-based admissions] whether or not they can do so in full candor through adoption of *** plans of the kind here at issue. Without recourse to such plans, institutions of higher education may resort to camouflage **** [thereby] achieving similar numbers through winks, nods, and disguises.

Gratz v. Bollinger, 539 U.S. at 304 (Ginsburg, J., dissenting).

In response to Justice Ginsburg's comment, this Court's majority opinion in *Gratz* rightly questioned why, if the universities will pursue their policies of racial balancing "whether or not they violate the United States Constitution" (as Justice Ginsburg had implied), the Court "should defer" to the universities' judgment. *Gratz v. Bollinger*, 539 U.S. at 275, n. 22. Why indeed?

The majority opinion then suggested (albeit facetiously) that there was an alternative way to dealing with the universities' violations: The Court could simply "chang[e] the Constitution so that it conforms to the conduct of the universities." *Gratz v. Bollinger*, 539 U.S. at 275, n. 22.

However, neither looking the other way while the universities "violate the United States Constitution" nor having this Court "chang[e] the Constitution" is necessary. For, between these two extremes, there is a far better alternative. In fact, the majority's wish that the universities' violations be dealt with "by requiring the universities to obey the Constitution," *Gratz v. Bollinger*, 539 U.S. at 275, n. 22, could be realized by a simple, commonsense set of rules that would *prevent* most of these violations from occurring in the first place.

But, first, let us look at how colleges obtain the racial and ethnic information on which to discriminate against applicants.

II. This Court Should Let College Applicants Use Self-Help Methods to Avoid Being Victims of Illegal Discrimination

A. How Colleges Obtain the Racial and Ethnic Information on Which to Discriminate

As demonstrated above, Harvard (like the other elite colleges) currently discriminates against Asian-American applicants because, as Harvard Law Professor Alan Dershowitz has stated: "Harvard wants a student body that possesses a certain racial balance." *See* Pan, *supra*.

However, before the elite colleges can implement their illegal policy of racial balancing, the colleges must first be able to identify the applicants' race and ethnicity. As journalist Jessica Gross has explained, this was the *original* purpose of the college application form:

> [T]he need for an application **** [arose because college] administrators noted with dismay that selecting based on academic merit alone dangerously increased the percentage of Jewish students.
>
> In 1919, Columbia University unveiled the first modern college application. The eight-page form requested, among other things, a photograph, "religious affiliation," and "mother's maiden name in full." Harvard, Yale and Princeton created their own forms, *** requesting photographs and instituting personal interviews. As one admiring Harvard board member put it, there was "consequently no [need for the] Jew question at Princeton."
>
> The "character"-based application spread from the Northeast across the country. It eventually evolved into what became known as the Common Application, which began in 1975 and currently serves 517 colleges. *** [Thus] the [college] application was initially devised to exclude [Jews] ****

Jessica Gross, *Who Made That College Application?* The New York Times Magazine (Nov. 8, 2013) (available at http://www.nytimes.com/2013/11/10/magazine/who-made-that-college-application.html?_r=0).

Accordingly, as Professor Jerome Karabel has noted, to reveal whether or not they were Jewish:

> Starting in the fall of 1922, applicants [to Harvard] were required to answer questions on "Race and Color," "Religious Preference,"

> "Maiden Name of Mother," "Birthplace of Father," and "What change, if any, has been made since birth in your own name or that of your father (Explain fully.)" Lest any Jews slip through this tightly woven net by failing to disclose their background ***, the high school principal or private school headmaster was asked to fill out a form that asked him to "indicate by a check [the applicant's] religious preference so far as known . . . Protestant . . . Roman Catholic . . . Hebrew . . . Unknown."

KARABEL, *supra*, at 94.

Thus, "in the case of Harvard's admissions practices, the generation of the knowledge of an applicant's religious background was a precondition for the exercise of the power to discriminate." KARABEL, *supra*, at 578, n. 104 (citation omitted). Therefore, an obvious way to thwart Harvard and the other elite colleges in their efforts at illegal racial balancing is to make it much more difficult for these colleges to know the race and ethnicity of their applicants.

As Ms. Gross pointed out, Harvard's "Jew question **** eventually evolved into what became known as the Common Application." Despite its anti-Semitic roots, the Common Application is not only still around, but it also still asks applicants to reveal their race and ethnicity. Furthermore, Harvard (like most elite U.S. colleges) *requires* applicants to use either the Common Application or the nearly-identical Universal College Application. *See* http://college.harvard.edu/admissions/application-requirements ("All freshman applicants — both international

and U.S. candidates — must complete the Common Application or Universal College Application.").

Both the Common Application (http://www.cultural.org/esl/common-app-2014.pdf) and the Universal College Application (https://www.universalcollegeapp.com/documents/uca-first-year.pdf) ask college applicants to disclose their racial and ethnic background. This occurs in the "Demographics" section of the Common Application and in the "Ethnicity" section of the Universal College Application.

While the demographics and ethnicity questions are optional, both applications also contain a *mandatory* "Family" section, which is designed to provide the colleges with this same racial and ethnic information (albeit indirectly). For example, the "Family" section of the Common Application *requires* applicants to provide:

- The names and former[4] names of the applicant's birth parents.
- The countries of birth, current home addresses, occupations, and employers of the applicant's birth parents.
- The names of the applicant's siblings.
- The names of the colleges that the applicant's parents and siblings have attended, including the degrees awarded and their dates.

---

[4] The current requirement that applicants disclose their birth parents' *former* names was added beginning with the 2012-2013 Common Application, and represented a recent return to one of the original "Jew questions" from Harvard's 1922 application!

There is only one reason that both the Common Application and the Universal College Application contain a "Family" section *requiring* applicants to reveal their racial and ethnic backgrounds whether the applicants want to or not.[5] The reason is so that the colleges can easily identify the applicants' race and ethnicity for the purpose of using them — both for and against the applicants — as a decisive factor in the colleges' pursuit of illegal racial balancing.

For example, as Professor Karabel has explained:

> [There are] two separate, but related factors: the criteria (academic *** [etc.]) that govern decisions of inclusion and exclusion [in college admissions], and the procedures used to see that the criteria are put into effect. An emphasis on *** [an applicant's] origin would be an admissions criterion; an application form asking numerous questions about family *** background is a procedure set up to make possible the enforcement of [this] *** specific criterion.

KARABEL, *supra*, at 584, n. 102.

Besides the written application forms, the colleges have two ways to obtain the racial and ethnic back-

---

5 UT's application also requires applicants to reveal their racial and ethnic background. *See* #7 under "Biographical Information" of *Instructions for Completing Your ApplyTexas Application* (available at https://www.applytexas.org/adappc/html/fresh15_help.html) ("Provide the information regarding your ethnic background and race. The information *** may be used by some institutions in admission or scholarship decisions.").

grounds of their applicants from the applicants' secondary schools (also *without* the applicants' consent).

First, the National Association of College Admissions Counselors' (NACAC's) Statement of Good Practice requires secondary-school college counselors to provide colleges with "accurate descriptions of the candidates' personal qualities relevant to the admissions process." *See* section III.B.2 of the *Mandatory Practices* part of the NACAC's Statement of Good Practice at 5 (Oct. 3, 2014) (available at http://www.nacacnet.org/about/Governance/Policies/Documents/SPGP_10_3_2014.pdf). The phrase "personal qualities," of course, is code for the candidates' racial and ethnic information. Pursuant to this section, secondary-school counselors routinely provide colleges with the race and ethnicity of their students without asking the students' permission.

Second, the Postsecondary Electronic Standards Council (PESC) tells secondary schools to place on their students' high-school transcripts, which the schools send electronically to the colleges, the students' "ethnicity code" and "race code" because these supposedly "may be helpful to the receiving [college] *** to identify the student." *See* Implementation Guide to the PESC XML Standard Format for the High School Transcript Version 1.30 at 63 (July 26, 2012) (available at http://www.pesc.org/library/docs/standards/High%20School%20Transcript/XML%20HS%20Transcript%20Impl%20Guide%20Version%201.3.0%202012%2007%2026.pdf). Of course, applicants never see the electronic version of their high-school transcripts and, thus, are unaware that their race and ethnicity have been disclosed behind their backs.

B. How to Prevent Colleges from Unlawfully Discriminating Against Applicants on the Basis of Race or Ethnicity

The mandatory "Family" sections in both the Common Application and the Universal College Application as well as the more direct questions about race and ethnicity on UT's application form, *see supra* p. 34, n. 5, are very objectionable. This is because applicants are *required* to answer questions revealing their racial and ethnic background. Similarly, it is also very objectionable that the colleges obtain information on the racial and ethnic backgrounds of their applicants from the applicants' secondary schools without the applicants' consent.

Accordingly, at a minimum, any undergraduate college that receives federal grant funds or whose students receive federal financial aid *should* be prohibited from forcing applicants for admission to reveal information concerning the applicants' race or ethnicity against the applicants' wishes. (This includes requiring photos or interviews.) Furthermore, such colleges *should* also be prohibited from obtaining this information from the applicants' secondary schools or from any other source without the applicants' permission. There are three reasons for this.

First, since applicants may voluntarily identify their racial and ethnic background, and universities may then use this information in appropriate cases as a "plus" factor in the applicants' files, there is no need for a college to require other applicants to reveal this information against their will. Thus, admissions systems — such as UT's — that force all applicants to reveal their racial and ethnic back-

ground should *fail* the narrow-tailoring inquiry with respect to race-conscious university admissions programs under this Court's strict-scrutiny analysis.

Second, as was previously pointed out, *see supra* p. 32, "in the case of *** [college] admission practices, the generation of the knowledge of an applicant's *** [family] background [i]s a precondition for the exercise of the power to discriminate." Thus, the only reason that the colleges require all applicants to reveal their racial and ethnic background is so that the colleges can then use it in admissions — both for and against the applicants — as a decisive factor to achieve racial balancing.

Third, once the colleges know the race and ethnicity of their applicants, the colleges use this knowledge to fabricate, as a pretext, a race-neutral justification to reject certain of those applicants. This previously occurred to the Jews, is now happening to Asian-Americans, and will be repeated with any group that threatens the hegemony of the ruling class. Thus, applicants must have the right to prevent the colleges from obtaining this information against the applicants' wishes. Otherwise, if the colleges can obtain the applicants' race and ethnicity, the colleges will then continue to use this information illegally.

To prevent colleges from obtaining information concerning the applicants' race or ethnicity against the applicants' wishes, this Court should adopt a variation of the nation's workplace anti-discrimination rules for undergraduate college admissions.

For example, the U.S. Equal Employment Opportunity Commission's (EEOC's) guidelines on "Prohibited Employment Policies/Practices" state:

> As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, *** national origin, *** and religion are irrelevant in such determinations.
>
> ****
>
> [S]uch inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.
>
> Therefore, inquiries *** which may indicate the applicant's race, *** national origin, *** religion, color or ancestry if answered, should generally be avoided.
>
> Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

See under "Pre-Employment Inquiries (General)" of the EEOC's *Prohibited Employment Policies/ Practices* (available at http://www1.eeoc.gov/laws/practices/#application_and_hiring).

Consequently, human-resources attorneys routinely advise their clients that:

> [There are some] very illegal questions [that employers may not ask] **** Any questions that reveal your *** race, national origin, *** [or] religion *** are off-limits. Any question

> that asks a candidate to reveal information about such topics without the questioning having a job related basis will violate the various state and federal discrimination laws.

Vivian Giang, 11 *Common Interview Questions That Are Actually Illegal*, Business Insider (July 5, 2013) (available at http://www.businessinsider.com/11-illegal-interview-questions-2013-7).

Since higher education is really about future employment, this Court should hold colleges accountable to the same policies that underlie the workplace anti-discrimination laws and treat a college's discriminatory practices just as the Court would do if such discrimination had occurred in employment.

CONCLUSION

Therefore, this Court should rule as follows:

- Colleges shall be allowed to collect and use information *volunteered* by the applicants that reveals the applicant's race or ethnicity.

- However, for applicants who choose *not* to volunteer their race or ethnicity, colleges shall be banned from seeking, collecting, or using any information that reveals those applicants' race or ethnicity.

- To favor under-represented minorities, UT *required all applicants* to reveal their race and ethnicity. Because this requirement was not narrowly tailored and did not use a less-restrictive means (e.g., *voluntary* disclosure by those minorities), it fails strict scrutiny.

- Colleges may collect data concerning the race and ethnicity of all *enrolled* students for record-keeping purposes, provided that such information does not identify students individually. [6]

Adopting a variation of the nation's workplace anti-discrimination rules for undergraduate college admissions would be particularly appropriate for four reasons.

First, higher education is really about future employment.

Second, in many ways, applicants for admission to college are analogous to prospective employees seeking a job.

Third, anti-discrimination laws have been enforced in employment without any problem and they could be enforced in college admissions, too.

Fourth, simply prohibiting undergraduate colleges from forcing applicants for admission to disclose their race or ethnicity would not impinge on the

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[6] One piece of information that often reveals a student's race or ethnicity is the student's name. Therefore, if students have the right to shield other kinds of information that reveals their race and ethnicity from the prying eyes of the colleges to which they are applying, then students should also have the right to shield their names if they so desire. To accomplish this, a student should be allowed to inform his or her secondary school of a pseudonym for the student that the school must use in connection with the student's school-related activities, including applying to college and taking the SAT and other standard-ized tests. However, upon the student's enrollment in college, the secondary school should have a duty to inform the college of the student's actual or previous name(s).

colleges' rights to establish the admissions criteria on which they choose their students.

As then-Assistant U.S. Attorney General William Bradford Reynolds said in 1988:

> [We should not] permit a greater tolerance for race-based discrimination on our college campuses than we will allow with respect to other programs or institutions subject to federal civil rights laws. A college degree is every bit as important to an individual as a seat on a bus, membership in a union, the ability to run for public office and participate in the electoral process.

Reynolds, *supra*, at 13.

Accordingly, this Court should prohibit undergraduate colleges from requiring applicants for admission to disclose their race or ethnicity.

Otherwise, if this Court continues to condone the secretive holistic process of admissions *without* instituting the above prohibition, then colleges will continue to ignore this Court's rulings, continue to violate the Constitution, and continue to hide their violations under the rubric of the holistic admissions process.

Respectfully submitted,

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